IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2547 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ATMARAMBHAI MAGANLAL PATEL

Versus

STATE OF GUJARAT

Appearance:

MR TUSHAR MEHTA for Petitioners

MR AD OZA, GOVERNMENT PLEADER for Respondent Nos.1 to 4,9 & 10

MR KS JHAVERI for Respondents Nos.5,7,8 and 11

MR RS SANJANWALA for Respondent No.6

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/10/2001

ORAL JUDGEMENT

#. Heard the learned advocates.

#. The petitioners are some of the Members of the Agricultural Produce Market Committee, Vijapur (hereinafter referred to as 'the said Committee'). The petitioners seek declaration that the respondent nos.8 and 10, the Members of the said Committee nominated under Clauses (iv) and (v) of sub section (1) of Section 11 of the Agricultural Produce Markets Act, 1963 (hereinafter referred to as 'the Act'), do not have a right to vote at the election of the Chairman and the Vice Chairman, the respondent nos.7 and 11 respectively, of the said Committee.

#. Mr.Mehta has submitted that at the election of the Chairman and the Vice Chairman of the said Committee, the nominated members of the said Committee had cast their votes which has tilted the balance. He has submitted that the nominated members of the said Committee had no right to cast their votes at the election of the Chairman and the Vice Chairman. He has submitted that, it is the elected members alone who have right to contest at the election of the Chairman and the Vice Chairman of the Agricultural Produce Market Committee and the voting rights at such election shall also be restricted to such elected members alone. In other words, the nominated members shall have no right to vote at the election of the Chairman and the Vice Chairman of the Agricultural Produce Market Committee. In support of his contention, he has relied upon Sections 11, 17 and 25 of the Act and Rule 31 of the Gujarat Agricultural Produce Markets Rules, 1965 (hereinafter referred to as 'the Rules'). He has also relied upon Section 80(2) of the Gujarat Cooperative Societies Act, 1961 and the judgment of this Court in the matter of KANTILAL CHANDULAL SHAH v. C.J.JOSE AND ANR. [1987(1) GLR 602].

#. Sub section (1) of Section 11 of the Act provides for constitution of a Market Committee. Clause (i) thereof provides for election of eight agriculturists as Members of the Market Committee; Clause (ii) thereof provides for election of four Traders holding general licence; Clause (iii) thereof provides for election of two Representatives of the Cooperative Societies; Clause (iv) thereof provides for nomination of one Councillor by the Local Authority; and Clause (v) thereof provides for nomination of two Members by the State Government. Sub section (1) of Section 13 of the Act provides, interalia, for removal from office of any member of the Market Committee. Sub section (1) of Section 17 of the Act provides for election of the Chairman and the Vice Chairman of the Market Committee. The same reads as under :-

"(1) Every market committee shall elect one of its members from the members of the class specified in clauses (i), (ii) and (iii) of sub-section (1) of section 11 to be its Chairman and another member to be its Vice Chairman in such manner as may be prescribed."

Thus, Section 17(1) provides, inter alia, that a member elected under clauses (i), (ii) or (iii) of sub section (1) of Section 11 alone can contest election either as an election for Chairman or Vice Chairman. Rule 31 of the Rules provides for the procedure to be followed for the election of the Chairman or the Vice Chairman by a Market Committee. Mr.Mehta has submitted that categories of members who can contest the election of Chairman or Vice Chairman can alone vote at the election of the Chairman or the Vice Chairman. The legislative intention in this regard can well be ascertained by referring to sub section (1) of Section 13 of the Act. In sub section (1) of Section 13 of the Act, the words used are "whole number of members". Thus, whereever necessary, the legislature has used the words "whole number of members", which should indicate inclusion of the nominated members also. While, in sub section (1) of Section 17 of the Act, the statute has not referred to the nominated members at all. The nominated members, therefore, can not have a right to vote at the election of the Chairman or the Vice Chairman of a Market Committee. He has further submitted that assistance can be had from the language used in Section 80 of the Gujarat Cooperative Societies Act, 1961. Section 80 of the said Act empowers the Government to nominate its representatives in the Committee of a Society. It expressly provides that, "the members so nominated shall hold office during the pleasure of the State Government, or for such period as may be specified in the order by which they are appointed, and any such member on assuming office shall have all rights, duties, responsibilities and liabilities as if he were a member of the committee duly elected." He has strenuously urged that such express provision has not been incorporated in the Act. Hence, in absence of express provision, the nominated members can not have a right to vote at the election of the Chairman or the Vice Chairman of a Market Committee. In the matter of KANTILAL CHANDULAL SHAH v. C.J.JOSE AND ANR. (Supra), while considering the scope and ambit of Section 76(B)(2) of the Gujarat Cooperative Societies Act, this Court has relied upon the provisions contained in Section 49(2) of the Gujarat Panchayats Act, 1961. Similarly, while interpreting the scope and ambit of Section 17 of the

Act, reliance can safely be placed on Section 80 of the Gujarat Cooperative Societies Act, 1963, both being the statutes enacted by the same legislature.

#. I am unable to agree with the contentions raised by Mr.Mehta. The words "whole number of members" used in Section 13(1) of the Act is in context with the removal of a member of the Committee. What is intended is that, atleast 2/3rd of the whole number of members shall support the recommendation for removal of any member of the Market Committee. The said words have thus been used in juxtaposition of the total number of members as against the number of members present at the concerned meeting. Whereas, sub section (1) of Section 17 of the Act begins with the words "the market committee"; it shall necessarily mean the market committee constituted under section 11 of the Act. The constitution of the Market Committee provided under section 11(1) of the Act includes the nominated members also. Thus, in my view, whereever the word "market committee" is used, the same should mean, unless repugnant to the context thereof, the Market Committee constituted in accordance with Section 11(1) of the Act which should include the nominated members as well. The reference to the members of the class specified in clauses (i), (ii) and (iii) of sub section (1) of Section 11 of the Act is confined to the nomination as Chairman or Vice Chairman. In other words, it is only those members who belong to the class specified in clauses (i), (ii) and (iii) of sub section (1) of Section 11 of the Act, can offer the candidature for being elected as Chairman or Vice Chairman of the Market Committee. The said sub section neither expressly nor by implication applies to the voting right also. The language of Section 17(1) of the Act is clear and unambiguous. There is no possibility of giving it any meaning other than one referred to hereinabove. Even, under section 25 of the Act, the words used are "the market committee". Mr.Mehta has contended that the words "the market committee" used in Section 25 of the Act should necessarily mean as the Market Committee constituted in consonance with Section 11(1) of the Act and should also include the nominated members. Mr.Mehta has also relied upon sub rules (1) and (5) of Rule 31 of the Rules. He has submitted that the words "every member wishing to vote" occurring in sub rule (5) shall take its meaning from the words "to elect its chairman and vice chairman from amongst its member of the class specified in sub clauses (i), (ii) and (iii) of sub section (1) of Section 11 of the Act" and should mean that the members of the said classes alone should have a right to vote at the election of the Chairman and the Vice Chairman.

#. I fail to read the said rule in the manner Mr.Mehta intends it to be read. There is nothing in the said rule which should indicate that even the voting right is restricted to the members of the class specified in clauses (i), (ii) and (iii) of sub section (1) of Section 11 of the Act. The provision under consideration being clear and unambiguous is required to be given its simple meaning and no external aid is required as is made out by Mr.Mehta. I, therefore, hold that in election of Chairman or Vice Chairman of a Market Committee even the nominated members of the Market Committee specified under clauses (iv) and (v) of sub section (1) of Section 11 of the Act shall have right to vote.

#. For the reasons recorded hereinabove, the petition is dismissed. Rule is discharged. Parties shall bear their own costs.

11th October, 2001. (Ms. R.M.Doshit, J.)

/sakkaf